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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JOSE CANO-VALENCIA,

12 Petitioner,

13 vs.

14 UNITED STATES OF AMERICA,

15 Respondent.

CASE NO. 11CV843 DMS
(Associated criminal case: 08cr643)

**ORDER DENYING MOTION FOR
SENTENCING REDUCTION**

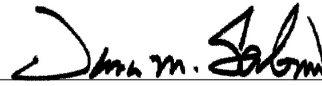
16 On June 13, 2008, Petitioner pleaded guilty to possession of over 500 grams of
17 methamphetamine with the intent to distribute in violation of 21 U.S.C. § 841(a)(1) subject to a plea
18 agreement. (Opp. at Ex. 1 at 2-3.) On September 3, 2008, this Court sentenced Petitioner to 57
19 months custody followed by three years of supervised release. (*Id.* at Ex. 3.) On April 20, 2011,
20 Petitioner filed the instant motion for a sentencing reduction pursuant to 18 U.S.C. § 3582(c)(2).

21 Petitioner seeks a reduction in his sentence based upon a claim that he is entitled to the
22 application of a subsequent amendment to the sentencing guidelines that reduced his sentencing range.
23 *See* 18 U.S.C. § 3582(c)(2). Defendant's motion is denied because he has failed to demonstrate that
24 his sentence is based on a sentencing range that has subsequently been lowered by the Sentencing
25 Commission. Petitioner does not identify a specific amendment to the United States Sentencing
26 Guidelines that has impacted his sentencing range and the two cases he cites in his motion, *United*
27 *States v. Leniear*, 574 F.3d 668 (9th Cir. 2009) and *United States v. Paulk*, 569 F.3d 1094 (9th Cir.
28 2009), address amendments to the base offense level for offenses involving cocaine.

1 In the alternative, liberally construing Petitioner's application as a motion to vacate, set aside,
2 or correct his sentence pursuant to 28 U.S.C. § 2255, it is also denied because, when Petitioner pleaded
3 guilty in exchange for a lower sentence, which was actually imposed, he waived his right to collaterally
4 attack his sentence. (*Id.* at Ex. 1 at 9.) Such a waiver bars relief under § 2255 other than for
5 ineffective assistance of counsel claims that challenge the voluntariness of the waiver. *See United*
6 *States v. Abarca*, 985 F.2d 1012, 1014 (9th Cir. 1993).

7 **IT IS SO ORDERED.**

8 DATED: August 3, 2011

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10 HON. DANA M. SABRAW
11 United States District Judge
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